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In re Application of
Gass et al.
Application No. 09/929,236
Filed: August 13, 2001
Attorney Docket No. SDT 307

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed March 24, 2005.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of December 22, 2003. An amendment was filed on April 15, 2004. In response to the amendment a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on April 29, 2004 which set an extendable reply period of one month. A reply to the Notice of Non-Compliant Amendment was not received. This application became abandoned on May 30, 2004. A Notice of Abandonment was mailed on March 18, 2005.

Petitioner asserts that the Notice of Non-Compliant Amendment mailed April 29, 2004 was never received. Petitioner contends a second amendment received in the Office on July 7, 2004 was not in response to the Notice of Non-Compliant Amendment. The purpose of the second amendment was to defer double patenting rejection in a co-pending application. In support, petitioner has provided a copy of what appears to be the front copy of a file jacket.

There is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office

¹M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).